

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES W. ZERRENNER,

Plaintiff-Appellee,

v

BONNIE S. ZERRENNER,

Defendant-Appellant.

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UNPUBLISHED

August 10, 2004

No. 246321

Kent Circuit Court

LC No. 97-010967-DO

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

I. Overview

Defendant Bonnie Zerrenner appeals as of right from a supplemental order directing plaintiff James Zerrenner to pay her \$21,892, which is the demonstrated, ascertainable income tax consequences of the spousal support she received. This is the second appeal in this case. In the first appeal, this Court reversed in part, affirmed in part, and remanded to a different judge. The remanded issues included restitution to Bonnie Zerrenner, James Zerrenner's pension plan, the difference in value between the personal property contained in the lists chosen by the parties, spousal support, and attorney fees. On September 25, 2002, the trial court entered the amended judgment after remand. We affirm in part, reverse in part, and remand for further proceedings.

II. Basic Facts And Procedural History

A. The Divorce Action

The parties were married on May 30, 1987. On October 21, 1997, James Zerrenner filed a complaint for divorce. After a two-day trial, the trial court awarded all interest in James Zerrenner's law practice to James Zerrenner; awarded the marital home to Bonnie Zerrenner; awarded James Zerrenner all interest in the Harbor Springs real estate; awarded James Zerrenner the 1991 Infiniti, the 1958 Cadillac, and the Tahoe; awarded Bonnie Zerrenner the Nissan and the GMC Jimmy; and awarded Bonnie Zerrenner all jewelry in her possession or under her control. Regarding the household items that were contained in lists A and B, which James Zerrenner had compiled, the trial court found that since Bonnie Zerrenner chose list A, which had a value of only \$25,000, rather than list B, which had a value of \$55,000, it would not consider Bonnie Zerrenner's request for one-half of the difference between these two lists. Regarding pensions and/or IRA accounts, the trial court ordered that each party would retain his

or her pension or IRA, and that Bonnie Zerrenner would retain the savings account in her name, free and clear of any claim. The trial court ordered that James Zerrenner shall pay Bonnie Zerrenner monthly alimony in gross in the amount of \$2,400 for a period of three years to help Bonnie Zerrenner complete her college education and for her general maintenance. Finally, the trial court awarded Bonnie Zerrenner \$6,500 pursuant to her request for attorney fees.

### B. The First Appeal

After the judgment of divorce was entered on April 14, 1999, Bonnie Zerrenner appealed on several grounds. First, Bonnie Zerrenner argued that the trial court erred by excluding the value of James Zerrenner's law firm and his pension plan from the marital estate. This Court found that the trial court did not err in concluding that James Zerrenner's law firm should be excluded. However, this Court found that Bonnie Zerrenner made significant contributions, both pecuniary and non-pecuniary, to the practice, as well as interrupting her own educational goals, which entitled her to an equitable claim for restitution. This Court remanded the matter to the trial court to determine a fair and equitable amount of restitution to Bonnie Zerrenner. This Court also found that the trial court erred by concluding that James Zerrenner's pension was not part of the marital estate.

Second, Bonnie Zerrenner argued that the trial court erred by failing to consider the difference between the parties' personal property awards when it disposed of the balance of the marital estate. This Court found that Bonnie Zerrenner was entitled to an equitable distribution of the marital estate, independent of her acceptance of any specific items. This Court also remanded the issue of alimony for reconsideration in conjunction with the trial court's re-evaluation of an equitable division of property.

Third, Bonnie Zerrenner argued that the trial court abused its discretion in awarding her \$6,500, which was only a fraction of her claimed attorney fees. This Court agreed, reasoning that James Zerrenner is an experienced lawyer and received free representation as a professional courtesy, that James Zerrenner initiated the divorce, that the disparity in the parties' income levels was substantial, and that the award did not include fees incurred during trial or post-trial matters. Finally, this Court found that the case should be assigned to a different trial judge, who had the discretion to determine whether proofs should be reopened or whether further briefing was necessary.

### C. The Arguments On Remand

Following this Court's opinion, the parties submitted briefs. In Bonnie Zerrenner's brief on remand, she argued that her claim for restitution should have a value of at least \$210,000, which was \$30,000 for each of the seven years she worked. Bonnie Zerrenner noted, however, that this figure did not account for lost FICA or pension plan contributions. James Zerrenner responded that the question that the trial court must answer was what Bonnie Zerrenner's contribution was, and what the fair and equitable restitution was for such contribution. James Zerrenner stated that this Court had provided no guidelines. According to James Zerrenner, there were some fundamental considerations that had to be reviewed prior to the grant of any monetary amount. James Zerrenner stated that the evidence showed that Bonnie Zerrenner made almost no contribution to the law practice. "To elevate her average 3.86 hours per week to an 'active and significant contribution' is unwarranted and is not supported by the proofs."

Bonnie Zerrenner also argued that this Court agreed that she should have been awarded one-half of James Zerrenner's pension since the testimony supported that it was accumulated during the marriage. James Zerrenner responded that he took serious issue with the assertion, both by Bonnie Zerrenner and by this Court, that his pension, a tax-free annuity contract, was included in the marital estate.

Bonnie Zerrenner also asserted that this Court reversed and remanded the issue of the difference in value between the household furniture and furnishings retained by James Zerrenner and those retained by Bonnie Zerrenner. Bonnie Zerrenner argued that reevaluating this issue was not as simple as taking the difference between the two personal property lists and dividing that difference by two. James Zerrenner responded that Bonnie Zerrenner was actually awarded more items than those contained in list A; thus, the value of list A should be increased, while the value of list B decreased. James Zerrenner further stated that Bonnie Zerrenner was given several chances to recant her selection of list A and was told by the trial court that it would not equalize any disparity in value. According to James Zerrenner, he should not be penalized for the fact that Bonnie Zerrenner now believed that she made a bad choice.

Bonnie Zerrenner also argued that she believed that the discrepancy in the value of the equity awarded to her in the marital home and what she actually realized from its sale was an appropriate issue for the trial court when it reconsidered the equitable division of the marital estate. Bonnie Zerrenner further argued that she was willing to accept the periodic alimony that she was already awarded as long as she was given a fair property settlement. Bonnie Zerrenner stated:

In other words, no part of the \$2,400 per month she received for three years should be considered a substitute for any part of the property settlement. However, a fair property settlement must also include the \$81,704 in equity defendant lost because she could not afford to keep the marital home until it could be sold at a reasonable price. Otherwise, Defendant requests that this differential be made up to her by an additional award of alimony in gross.

James Zerrenner responded that further consideration of this issue was not justified given that Bonnie Zerrenner accepted all of the alimony payments made under the judgment of divorce, that alimony was not reserved for future consideration, and that the trial court clearly stated its ruling regarding taxability.

Finally, Bonnie Zerrenner argued that she spent over \$19,000 on additional attorney fees since the trial. Bonnie Zerrenner requested these fees, any additional fees needed to conclude this matter, and interest. James Zerrenner responded:

The Court is informed that Defendant, after having her trial attorney fees in the amount of \$6,500.00 paid by Plaintiff, actually is \$1,000.00 ahead in a mathematical analysis. Defendant, dissatisfied with her trial result, sued her trial counsel for malpractice. A Stipulation and Order for Dismissal of that matter (including a Full Mutual Release of Claims by both Defendant and her attorney) was executed and entered in the Kent County Circuit Court approximately one year ago. Trial counsel waived any additional fees owing, and Defendant/wife received \$1,000.00 refund in this settlement.

Since all of the attorney fees connected with the trial court proceeding including trial and post-trial matters were waived by the attorney of record, James A. Evashevski (P 13252), the fee issue is moot. The Court of Appeals' observations 1-5 on page 5 of its Opinion are noted but have no probity as Defendant is not responsible for any fees and Plaintiff has already paid his ordered amount.

#### D. The Hearing On Remand

At the August 1, 2002 hearing, Bonnie Zerrenner's counsel argued that there should be an evidentiary hearing on the issue of restitution. The trial court asked if there were exhibits showing how many hours Bonnie Zerrenner worked at James Zerrenner's firm. James Zerrenner's counsel stated that there were, while Bonnie Zerrenner's counsel stated that those exhibits, i.e., the time sheets, did not include all the time that she had worked. Bonnie Zerrenner's counsel stated that those time sheets included only the time that she worked as a legal assistant, and did not include any of the secretarial or administrative work that she had done. The trial court stated that its concern was that Bonnie Zerrenner was going to have to get a CPA and have to audit the books and the records of James Zerrenner's firm. Bonnie Zerrenner's counsel stated that she had an affidavit of a CPA who had already looked at the Social Security and pension issues. The trial court asked Bonnie Zerrenner's counsel what she was claiming for restitution, and she responded that she was waiting to determine a set dollar amount until her expert completed his evaluation of her lost earning capacity, she had determined that she had lost \$6,825 in pension benefits, \$42,720 in social security benefits, and \$227,000 in wages. Bonnie Zerrenner's counsel submitted her expert's affidavit as an offer of proof for a future evidentiary hearing.

Regarding James Zerrenner's pension, Bonnie Zerrenner's counsel stated that this Court agreed with her client's contention that the trial court erred in concluding that James Zerrenner's pension was not part of the marital estate. The trial court noted that the original trial court apparently considered whether the pension was part of the marital estate by directing each party to keep their own. Bonnie Zerrenner's counsel disagreed, noting that while Bonnie Zerrenner's pension was clearly premarital, all the testimony indicated that James Zerrenner's was marital; yet the trial court identified both pensions as being premarital. Counsel asserted that this was why this Court instructed the trial court to re-examine the issue of the James Zerrenner's pension on remand.

James Zerrenner's counsel responded that the trial court did not state that James Zerrenner's pension was premarital anywhere in its opinion. The trial court asked Bonnie Zerrenner's counsel for a dollar amount her client was claiming with regard to this pension, and Bonnie Zerrenner's counsel stated that at trial, Bonnie Zerrenner testified that she believed that the pension was worth \$200,000, but acknowledged that this amount was based only on Bonnie Zerrenner's belief. Bonnie Zerrenner's counsel stated that she asked for documents regarding this pension, but that James Zerrenner would not provide them.

Regarding the property list issue, the trial court observed that Bonnie Zerrenner opted, on the record, to take list A, which the trial court felt should operate as a waiver of the issue. However, Bonnie Zerrenner's counsel argued that this Court had rejected this idea. The trial court asked what the difference was between these two lists, and Bonnie Zerrenner's counsel

responded that while James Zerrenner originally testified that his list was worth \$55,000, his latest testimony indicated that it was worth \$150,000.

Finally, Bonnie Zerrenner's counsel stated that she filed a motion for \$21,852.75 in additional attorney fees.

#### E. The Ruling On Remand

The trial court issued its ruling from the bench. First, the trial court noted this Court's ruling that Bonnie Zerrenner was entitled to restitution for her contributions to the law firm. Accordingly, the trial court relied on evidence indicating that she worked an average of 193 hours per year, then estimated that she earned \$12 an hour because she had no legal background, then multiplied these figures by the seven years she worked to arrive at the amount of \$16,212.

Next, the trial court found that the pension was offset by the debts that James Zerrenner had assumed. Regarding the property contained in lists A and B, the trial court reiterated its view that there had been a waiver on this issue, but given this Court's opinion to the contrary, the trial court found that there was a \$30,000 difference between the lists and that Bonnie Zerrenner had taken another \$5,000. Accordingly, the court awarded Bonnie Zerrenner \$10,000.

Regarding the issue of attorney fees, the trial court initially stated that an additional \$6,500 shall be paid. However, when James Zerrenner's attorney asked to whom this amount would be paid, the trial court responded that it was not sure. Bonnie Zerrenner's counsel stated that Bonnie Zerrenner had no claim for Evashevski's fees, therefore, the claim was for her fees. James Zerrenner's counsel stated that Bonnie Zerrenner did not have any right to claim such fees. The trial court asked how much money had been paid to Evashevski, and James Zerrenner's counsel responded that Evashevski had been paid \$6,500, but when Bonnie Zerrenner sued Evashevski for malpractice, he forgave any fees he had due and gave her a thousand dollars in addition. Reasoning that Bonnie Zerrenner had not actually paid Evashevski anything, the trial court ruled that no one was entitled to the \$6,500.

Finally, regarding alimony, the trial court stated that if the taxable amount could be determined with a degree of certainty, it would enter an order for that amount. The trial court held a hearing regarding the reimbursement for taxes paid on alimony on January 7, 2003.

The trial court entered the amendment to judgment after remand on September 25, 2002, and the supplemental order on January 7, 2003. Bonnie Zerrenner appeals as of right from the supplemental order.

In the amended judgment after remand, the trial court ordered that Bonnie Zerrenner be granted restitution in the amount of \$16,212; that James Zerrenner retain all right, title, and interest in his annuity contract; that Bonnie Zerrenner receive an additional \$10,000 with regard to the property settlement; that James Zerrenner pay Bonnie Zerrenner the demonstrated, ascertainable income tax consequences; and that to the extent Bonnie Zerrenner owed any attorney fees to Evashevski, James Zerrenner pay up to \$6,500 of them.

### III. James Zerrenner's Pension

#### A. Standard Of Review

Whether the law of the case doctrine applies is a question of law that is reviewed de novo.<sup>1</sup>

#### B. Law Of The Case Doctrine

Bonnie Zerrenner contends that the trial court clearly erred by failing to follow the law of the case doctrine when it determined, on remand, that James Zerrenner's pension was already included in the property distribution. We agree.

Under the law of the case doctrine, if an appellate court has decided a legal issue and remanded the case for further proceedings, the legal issues determined by the appellate court will not be differently decided on a subsequent appeal in the same case if the facts remain materially the same.<sup>2</sup> An appellate court's determination of an issue in a case thus generally binds lower tribunals on remand and the appellate court in subsequent appeals.<sup>3</sup> Accordingly, "[t]he power of a lower court on remand is to take such action as law and justice require that is not inconsistent with the judgment of the appellate court."<sup>4</sup>

In this Court's prior opinion, it instructed the trial court to re-examine the issue of James Zerrenner's pension in light of James Zerrenner's admission that the pension was marital property and in light of the law that any right to vested pension benefits accrued by a party during the marriage must be considered a part of the marital estate subject to award. On remand, the trial court ordered the following with regard to James Zerrenner's pension:

The Court holds that Plaintiff's annuity contract was before the trial court as Trial Exhibit 17. The contract was considered by the trial court and was granted to Plaintiff. Therefore, Plaintiff retains all right, title, and interest in his annuity contract.

Bonnie Zerrenner argues that the trial court clearly erred in failing to follow this Court's direction to re-examine this issue. On the other hand, James Zerrenner argues that the trial court did not abuse its discretion by not dividing his annuity benefits in light of his assumption of substantial amount of debts. James Zerrenner cites the August 1, 2002 hearing, where Judge Simon stated:

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<sup>1</sup> *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001) (citations omitted).

<sup>2</sup> *Grievance Administrator v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000).

<sup>3</sup> *Id.* at 260.

<sup>4</sup> *McCormick v McCormick*, 221 Mich App 672, 679; 562 NW2d 504 (1997) (citations omitted).

As to the pension plan, I find that's been offset by the debts assumed by the plaintiff, and I believe that the trial judge was, in offsetting the net, was trying to use that pension plan as an offset by these debts.

"The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions."<sup>5</sup> Neither the judgment of divorce nor the amended judgment made a finding regarding the offsetting of debts by the pension plan. Therefore, we conclude that the trial court did not examine this issue as this Court required. Thus, we remand this issue for reconsideration.

#### IV. Personal Property Division

##### A. Standard Of Review

We review the trial court's findings of fact for clear error and, if the findings of fact are upheld, we review the dispositional ruling to determine if it was fair and equitable in light of the facts.<sup>6</sup>

##### B. Values For List A And List B

Bonnie Zerrenner next contends that the trial court erred in the division of the personal property. The personal property was divided into list A, which had a value of \$25,000, and list B, which had a value of \$55,000. James Zerrenner assigned these values at trial. Bonnie Zerrenner indicated that she wanted the property contained in list A. The trial court found that Bonnie Zerrenner was entitled to the personal property in list A, but refused to consider the difference in values, reasoning that "[s]ince defendant was given the choice without any demand by plaintiff that he be awarded the difference in values, the Court will not consider defendant's request [for one-half the difference in value]." In the prior appeal, this Court concluded that in the absence of any stipulation by Bonnie Zerrenner to the waiver of the values James Zerrenner assigned the personal property, the trial court erred by failing to consider the difference in value between these two lists. On remand, the trial court found that

on a number of occasions, the trial judge allowed Defendant her choice, and that in so choosing, she may have waived her right to now object to the division of the personal property. However, in the interest of equity, based upon the record, the Court awards Defendant the additional sum of \$10,000, payable by Plaintiff within 180 days after the entry of this judgment.

Bonnie Zerrenner argues that James Zerrenner made post-trial representations regarding the value of the personal property that contradicted his trial testimony. Specifically, Bonnie Zerrenner argues that at the May 19, 1999 hearing on the motion to set aside the ex parte order, James Zerrenner stated: "I testified at trial that List B was worth over \$150,000." James

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<sup>5</sup> *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977) (citations omitted).

<sup>6</sup> *Sparks, supra* at 151-152.

Zerrenner contends that either the transcript is wrong or he misspoke. James Zerrenner specifically referenced his trial testimony, which was that the values of list A and B were \$25,000 and \$55,000, respectively. We agree that the \$150,000 figure was most likely a mistake.

Bonnie Zerrenner took personal property that was not included in list A, including a typewriter, a filing cabinet, a computer and a chair. The parties agreed that the typewriter and filing cabinet were separate assets; however, there was conflicting testimony as to whether the office chair and the computer were marital property. Thus, the trial court should have first determined whether the additional items were marital or separate assets.<sup>7</sup> In addition, the trial court clearly erred in placing the value of the personal property at \$5,000. In making its findings, the trial court is afforded discretion in arriving at a valuation, and it may accept expert testimony,<sup>8</sup> lay testimony,<sup>9</sup> or arrive at a decision within the range of proofs presented.<sup>10</sup> Because there was no testimony regarding the value of this personal property, the trial court clearly erred in its finding. Therefore, we remand this issue so that the trial court can ascertain the value of the personal property and, in a written determination, apportion it fairly and equitably.

## V. Equitable Restitution Award

### A. Standard Of Review

We review the trial court's findings of fact for clear error and, if the findings of fact are upheld, we review the dispositional ruling to determine if it was fair and equitable in light of the facts.<sup>11</sup>

### B. Bonnie Zerrenner's Contribution To The Law Practice

Bonnie Zerrenner next contends that the trial court clearly erred in its equitable restitution award. We agree. In the previous appeal, this Court found that because the record clearly established that Bonnie Zerrenner actively and significantly contributed to James Zerrenner's law practice during their marriage, this matter should be remanded to determine a fair and equitable amount of restitution. Bonnie Zerrenner argues that there is nothing fair or equitable about the \$16,212 the trial court awarded to her as restitution for the seven years she worked for the firm with no pay, no social security contribution, and no pension.

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<sup>7</sup> *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997).

<sup>8</sup> See *Young v Young*, 354 Mich 254, 256-257; 92 NW2d 328 (1958).

<sup>9</sup> See *Lee v Lee*, 191 Mich App 73, 76; 477 NW2d 429 (1991).

<sup>10</sup> See *Sullivan v Sullivan*, 175 Mich App 508, 511; 438 NW2d 309 (1989).

<sup>11</sup> *Sparks, supra* at 151-152.

The trial court has great latitude in determining the valuation of a marital asset, and its valuation is not clear error if it is within the range established by the proofs.<sup>12</sup> Both parties' testimony supports the trial court's finding that Bonnie Zerrenner did not work full-time at the law firm. However, the trial court's finding that Bonnie Zerrenner should be compensated for an average of 3.86 hours per week is not supported by the trial testimony. We note that the trial court stated the following at the August 1, 2002 hearing:

I believe evidence was introduced during the course of the trial that showed the number of hours that she had billed. That's the only thing the Court had to go on -- I'm going to go on that -- which indicated an average of 193 hours per year. If I bill that at \$12 an hour -- I don't know. There's no indication of what she was doing. She had no legal background and wasn't a paralegal, and I understood it. If you multiply that by 193 and then by 7 -- I can give you the amount here in a minute -- it would be \$16,212. That's the amount I find for restitution for her contributions to the firm.

The trial court relied solely on the billable hour statements introduced by James Zerrenner while ignoring Bonnie Zerrenner's testimony and the testimony of James Zerrenner's law partner regarding the time Bonnie Zerrenner actually spent in the office. Bonnie Zerrenner testified she sometimes worked 9:00 a.m. to 5:00 p.m., and other times she would come in late or leave early. Richard Roane, James Zerrenner's partner, testified that while Bonnie Zerrenner would typically come in after 9:00 a.m., she would often stay until 5:00 p.m. Thus, we conclude that the trial court's determination that Bonnie Zerrenner only worked 193 hours per year during the seven year period is not supported by the proofs. We again remand for a written determination, based upon factual evidence following a hearing, of a fair and equitable amount of restitution.

## VI. The Marital Estate

### A. Standard Of Review

We review the trial court's findings of fact for clear error and, if the findings of fact are upheld, we review the dispositional ruling to determine if it was fair and equitable in light of the facts.<sup>13</sup>

### B. Division Of The Marital Estate

Bonnie Zerrenner next contends that the trial court erred in awarding her a disproportionately small and inadequate share of the marital estate. In the prior appeal, this Court concluded that given the parties' ten-year marriage, the significant discrepancy in the parties' income levels, Bonnie Zerrenner's unrewarded contributions toward the parties' marital estate, and the alleged lack of fault on the part of either party, the trial court's property

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<sup>12</sup> *Jansen v Jansen*, 205 Mich App 169, 171; 517 NW2d 275 (1994).

<sup>13</sup> *Sparks, supra* at 151-152.

distribution was an abuse of discretion and was inequitable. Thus, this Court remanded for a redetermination of the disposition of the marital estate in accordance with its opinion.

Bonnie Zerrenner observes that the trial court relied on James Zerrenner's testimony that each party was receiving approximately \$270,000 of the marital assets. In James Zerrenner's distribution of assets, he listed the parties' pensions, Bonnie Zerrenner's jewelry, and attorney fees awarded to Bonnie Zerrenner. Bonnie Zerrenner argues that her pension and savings account were premarital property and should not have been listed in the property settlement, that the trial court never established that Bonnie Zerrenner's jewelry was worth \$40,000, and that the trial court erred in including Bonnie Zerrenner's award for attorney fees in the property distribution amount.

After reviewing the judgment of divorce and the amended judgment, we agree that the parties did not each receive approximately \$270,000 of the marital assets. Because we have remanded the issues of James Zerrenner's pension, the difference between the two property lists, and restitution, we direct the trial court to determine on remand whether the distribution of the property is equitable after addressing those issues.

## VII. Sale Of The Marital Home

Bonnie Zerrenner further argues that the trial court erred by failing to consider what she actually realized from the sale of the marital home. We note that in the previous appeal, Bonnie Zerrenner claimed that the trial court erred in its calculation of the value of the marital home because it assigned a predetermined equity value, but this Court rejected the argument. Therefore, we conclude that the trial court did not err by failing to consider what Bonnie Zerrenner actually realized from the equity in the marital home.

## VIII. Spousal Support Award

### A. Standard Of Review

An award of spousal support is discretionary and we will not disturb it unless we are left with a firm conviction that the ruling was inequitable.<sup>14</sup>

### B. Taxation Of Spousal Support

Bonnie Zerrenner contends that the trial court erred in its award of her spousal support. The trial court issued its written opinion in January 1999, awarding Bonnie Zerrenner "alimony in gross" in monthly installments of \$2,400 for three years in order to help Bonnie Zerrenner complete college and for general maintenance. James Zerrenner moved to clarify the trial court's opinion, arguing that the spousal support should be tax deductible to him. In the judgment of divorce, the trial court ordered that James Zerrenner pay \$2,400 per month for three years, and added that the payments were taxable to Bonnie Zerrenner, deductible by James

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<sup>14</sup> *Id.* at 146-152.

Zerrenner, and contingent on Bonnie Zerrenner's survival. In the previous appeal, Bonnie Zerrenner claimed that the trial court's post-opinion modification converted the alimony from gross to periodic alimony, subject to taxation and decreasing its value. This Court agreed, stating that because an "alimony award goes hand in glove with the property distribution," it remanded this issue to the trial court for reconsideration in conjunction with its re-evaluation of an equitable division of property.

The trial court held a hearing on January 7, 2003 regarding the reimbursement for the taxes paid by Bonnie Zerrenner on the spousal support. Bonnie Zerrenner called a CPA who examined Bonnie Zerrenner's tax returns and determined that she paid \$2,754 in 1999; \$9,029 in 2000; and \$10,124 in 2001 in tax on the spousal support. The CPA estimated that the additional tax for 2002 would be \$984, making the total \$22,891. James Zerrenner's witness testified that the amount was \$14,914.

The trial court ordered that James Zerrenner pay Bonnie Zerrenner \$21,892. The testimony supports this finding. Thus, Bonnie Zerrenner was reimbursed for the tax consequences. However, because the issues of James Zerrenner's pension, restitution, and the value of the personal property have been remanded, we remand this issue for a determination whether the spousal support award is equitable in light of the new division of marital property.

## IX. Attorney Fees

### A. Standard Of Review

We review the trial court's award of attorney fees for an abuse of discretion.<sup>15</sup>

### B. Abandonment Of Issue

Bonnie Zerrenner contends that the trial court abused its discretion in failing to award her adequate attorney fees. We disagree. "An abuse of discretion occurs when the result is so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias."<sup>16</sup> Based on the fact that Attorney James A. Evashevski forgave the fees owed him by Bonnie Zerrenner, we find that the trial court did not abuse its discretion ordering that to the extent that Evashevski has any attorney fees owed to him by Bonnie Zerrenner, James Zerrenner shall pay the same, up to \$6,500.

This Court, in the previous appeal, stated that the trial court's award of \$6,500 was an abuse of discretion, given that the award did not include fees during trial or post-trial matters. However, the trial court record contains a stipulation and order to withdraw Bonnie Zerrenner's

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<sup>15</sup> *Stoudemire v Stoudemire*, 248 Mich App 325, 344; 639 NW2d 274 (2001) (citations omitted).

<sup>16</sup> *Mixon v Mixon*, 237 Mich App 159, 163; 602 NW2d 406 (1999) (citations omitted).

counsel's request for attorney fees, which was entered on April 3, 2003. Based on this stipulation and order, we find that Bonnie Zerrenner has abandoned this issue.<sup>17</sup>

## X. Failure To Award Interest

### A. Standard Of Review

We review a trial court's decision on a request for interest for an abuse of discretion.<sup>18</sup>

### B. Interest On Delays Caused By Appeal

Bonnie Zerrenner next contends that the trial court abused its discretion in failing to award interest. We disagree.

Judgments obtained in a divorce action are not subject to mandatory statutory interest under MCL 600.6013.<sup>19</sup> As this Court has explained:

A trial court does not compensate a party for loss in a divorce action, but rather seeks an equitable distribution of property. Accordingly, any interest award in a divorce action is not intended to serve the purpose of compensating a party for lost use of funds.<sup>[20]</sup>

However, the award of interest in a divorce action is not altogether barred. A trial court's equitable powers include the discretion to award interest on overdue property settlement payments. This Court has noted that awarding interest where payments on a property settlement were overdue "prevents the delinquent party from realizing a windfall and assures prompt compliance with court orders."<sup>21</sup>

In *Reigle*, this Court agreed with the trial court's finding that the payments were not overdue because the defendant diligently prosecuted his appeal and promptly honored the terms of the judgment once an opinion adverse to his claim was rendered by the court.<sup>22</sup> The plaintiff also argued that postjudgment interest on property settlement payments should be awarded for delay caused by the appeal, and relied on *Harden v Harden*<sup>23</sup> for that proposition.<sup>24</sup> This Court

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<sup>17</sup> See *Felice v Cheboygan County Zoning Commission*, 103 Mich App 752, 746; 304 NW2d 1 (1981).

<sup>18</sup> *Reigle v Reigle*, 189 Mich App 386, 393; 474 NW2d 297 (1991).

<sup>19</sup> *Thomas v Thomas (On Remand)*, 176 Mich App 90, 92; 439 NW2d 270 (1989).

<sup>20</sup> *Reigle*, *supra* at 394.

<sup>21</sup> *Id.* (citing *Ashbrenner v Ashbrenner*, 156 Mich App 373, 377; 401 NW2d 373 (1986)).

<sup>22</sup> *Id.*

<sup>23</sup> *Harden v Harden*, 130 P2d 311 (Okla 1942).

<sup>24</sup> *Reigle*, *supra* at 394.

stated that the plaintiff read the law set forth in that case “too sanguinely.”<sup>25</sup> This Court observed that *Harden* was inapposite in two material respects: first, the divorce judgment in *Harden* specifically allowed interest to accrue and be paid on any portion of the alimony payments not paid within the time specified and, second, that Oklahoma law provided that alimony decreed to a wife is as much a debt as a judgment for money.<sup>26</sup> This Court noted Michigan law differed with Oklahoma law in that respect.<sup>27</sup> Thus, this Court held that the trial court did not abuse its discretion in denying the plaintiff’s request for interest.<sup>28</sup>

The rule in Michigan, then, is that trial courts may award interest on overdue property settlement payments (that is, where a delinquent party has failed to comply with court orders) but may not award interest for delay caused by appeal. Based on the record before this Court, it appears that James Zerrenner has honored the terms of the judgments entered in this case. Because there are no overdue payments, and because Bonnie Zerrenner’s request for interest is based on delay caused by appeal, we conclude that the trial court did not abuse its discretion in denying Bonnie Zerrenner’s request for interest.

## XI. Failure To Reopen Proofs

### A. Standard Of Review

We review the trial court’s decision to reopen proofs to modify a divorce judgment for an abuse of discretion.<sup>29</sup>

### B. Opportunity To Present Evidence On Remand

Bonnie Zerrenner contends that the trial court abused its discretion in failing to reopen the proofs on remand. We disagree.

Both parties submitted briefs on remand, to which they attached exhibits. A hearing was held on August 1, 2002, where each party was provided ample opportunity to address the issues on remand. While the trial court stated on the record at this hearing that it did not want to “retry” the case, a hearing was held on January 7, 2003 regarding the reimbursement of taxes on the spousal support. Because the trial court allowed additional briefing, allowed the parties an opportunity for oral argument, and allowed a hearing on the tax issue, we conclude that the trial court’s refusal to fully reopen proofs was not so palpably and grossly violative of fact and logic that it evidenced perversity of will or the exercise of passion.<sup>30</sup>

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 396.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Mixon, supra* at 163.

<sup>30</sup> *In re Weber*, 257 Mich App 558, 560; 669 NW2d 288 (2003).

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Donald S. Owens

/s/ Bill Schuette